

Global Enterprises Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-1987

Reported in : (1987)(14)ECC341

Appellant : Global Enterprises

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Mrs. Archana Wadhwa

Judgement :

1. Brief facts of the case are that on 14-1-1981 in pursuit of an information Hqrs. Preventive Staff of Central Excise Collectorate paid a surprise visit to the appellant's factory licensed for the manufacture of wrist watches. On checking the physical stock vis-a-vis book balance lying in the factory and in the Bank's godown pledged with the Indian Overseas Bank, 100 'wrist watches unaccounted for and fully assembled found in the factory and 100 wrist watches found in the Bank's godown pledged with the Bank were seized as they were considered liable to confiscation by the Seizing Officers. On the scrutiny of accounts maintained by the appellant, it was also alleged that 2828 watches were clandestinely removed by the appellant inasmuch as the above number of watch movements imported by the appellant could not be accounted for against the total number of watch movements imported and the total-number of wrist watches produced out of such watch movements.

After due process of adjudication, the adjudicating authority has released 100 watches seized from the factory premises as he considered them to have been assembled on the same day on which the officers visited and therefore, those watches were to be accounted for in R.G. 1 at the end of the day. Remaining 100 pcs. of watches seized from the Bank's godown have, however, been confiscated under Rule 173Q on the ground that the appellant could not produce adequate evidence of payment of duty thereon. An option, however, has been given to the appellant to redeem those 100 watches on payment of a fine of Rs. 2,000/-. Learned adjudicating authority has also demanded duty on 1329 watches manufactured and cleared by the appellant clandestinely without payment of duty. A penalty of Rs. 10,000/- has also been imposed under Rule 173Q for contravention of Rules 9(1), 52, 52A, 53, 226 and 173G of the Central Excise Rules.

2. Learned advocate Mrs. Archana Wadhwa appearing for the appellant has stated that there is absolutely no evidence with the department that the 10Q watches seized from the Bank's godown and pledged with the Bank were removed from the factory without payment of duty. It has been urged by the appellant that the onus' to prove the non-duty paid character of the goods lies on the department. On the other hand, the appellant has urged that these watches form part of the consignment which were cleared on payment of duty on 24-12-1980 and taken to his duty paid godown in the sales office in the city. From that duty paid lot these 100 watches were pledged with the Bank to obtain more credit and finance. The only ground on which these watches have been held to be non-duty paid by the adjudicating authority is that the address of the appellant in respect of these watches given with the Sank is that of his factory and not of his sales office. Learned advocate has' urged that this can hardly form the basis of proving the non-duty paid character of the goods inasmuch as the goods have not been pledged with the Bank by the appellant at two different addresses one pertaining to his sales office and other pertaining to his factory.

3. Heard learned SDR as well on this plea. She has nothing more to say than what has been stated in the impugned order.

4. I agree with the plea of the learned advocate for the appellant.

Address of the factory by itself with regard to the pledging/hypothecation of the watches with the Bank cannot form the basis of treating the goods as non-duty paid, I also agree with the learned advocate for the appellant that the onus of proving the non-duty paid character of the goods lies on the department and no adequate evidence had been adduced by the latter to that effect.

Accordingly, I order release of 'these 100 watches which have been confiscated by the adjudicating authority. As regards the demand of duty on the watches held to have been manufactured and removed clandestinely by the adjudicating authority, learned advocate for the appellant has urged that since the inception of the factory in December 1978 upto 14-1-1981 the officers visited the factory, 43,900 watch movements have been imported by the appellant on payment of concessional rate of duty after execution of bond on production of end use certificates. Out of these watch movements only 1,328 watch movements remained to be accounted for, according to the finding of the adjudicating authority. This comes to about 3% of the total watch movements during the period of more than two years. This non-accountal, according to the learned advocate for the appellant, is on account of wastage of parts of watches which are received in ckd condition which are first assembled into skd condition and then assembled into watches.

These watch parts, as is commonly known, are micro parts which fly off quite often during assembly watches. This wastage is not peculiar to this factory alone and it was urged before the lower authority that even this wastage can be found in WHIT and other Assembly Units in the State and at other places. The learned adjudicating authority, according to the learned advocate, instead of verifying this fact and arriving at some norms for wastages during the assembly of skd watch movements and final assembly of watches the learned adjudicating authority has merely presumed and surmised that an identical number of watches must have been manufactured and thus clandestinely removed.

There is no warrant for such a presumption. This has been held so by the Supreme Court in the case of Avadh Sugar Mills in 1978 ELT 3.172 wherein it has been observed by the Hon'ble Court as follows :- "In the circumstances, therefore,

we must hold that the finding that 11.606 maunds of sugar were not accounted for by the appellant has been arrived at without any tangible evidence and" i\$ based only on inferences involving unwarranted assumptions. The finding is thus vitiated by an error of "law." 5. Learned SDR, on the other hand, has reiterated the findings of the adjudicating authority. She has also urged that if there was a wastage of watch parts during the process of assembly the appellant could substantiate the plea by producing the wastage material as is normally done in case of some other commodities as wires and cables industry. In the absence of any production of waste material by the appellant, learned SDR has urged that no benefit on account of wastage claimed by the appellant should be given by the adjudicating authority.

Replying to the point raised, the learned advocate Mrs. Wadhwa has stated that watch parts are so small in size that they become the part of the sweeping of the assembly unit and it is not worth the effort, nor is it practically feasible to retrieve them and produce them before the Excise authorities. Analogy from the wires and cables industry cannot be drawn to apply it to the watch assembling industry.

6. I have carefully considered the pleas advanced on both sides. I agree with the plea of the appellant's learned advocate. Watch parts are really so small that wastage does occur during the process of assembly. Learned adjudicating authority has gone wrong in not comparing the wastage in the appellant's unit with the wastage occurring, if any, in some other units of similar size and similar methods of assembly. Instead of making an effort towards comparison, the learned adjudicating authority has completely ignored the plea of the appellant as rightly pointed out by Mrs. Archana Wadhwa. A demand of duty cannot be fastened on the appellant merely on surmises and unwarranted assumptions. Supreme Court's ruling relied upon by the learned advocate is very apt in the facts and circumstances of this case. Accordingly, the demand of duty is set aside.

7. In view of the aforesaid discussion on the two points involved, penalty of Rs. 10,000/- imposed on the appellant is also liable to be set aside and I order accordingly. In sum, the appeal is allowed in full with consequential relief to the appellant.

